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SENATE

REPORT
No. 98–133

PROVIDING FOR CONFIRMATION OF THE REPAYMENT CONTRACT OF THE DALLAS CREEK PARTICIPATING PROJECT, UPPER COLORADO STORAGE PROJECT, COLORADO

MAY 20 (legislative day, MAY 16), 1983.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 662]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 662) to provide for confirmation of the repayment contract of the Dallas Creek participating project of the Upper Colorado storage project, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

S. 662 would provide for confirmation of the repayment contract of the Dallas Creek participating project of the Upper Colorado River storage project. The effect of the measure would be statutory validation of the existing repayment contract between the United States and the Tri-County Water Conservancy District in Colorado.

BACKGROUND AND NEED

The Dallas Creek project was authorized in 1968 by the Colorado River Basin Project Act (Public Law 90–537). The project is located in west central Colorado and would provide water supplies for municipal and industrial purposes to the towns of Colona, Olathe, Montrose, and Delta. It would also provide a supplemental water supply for over 20,000 acres of irrigated land and 4,200 kilowatts of hydroelectric power. The major project feature is Ridgeway Dam on the Uncompaghre River.

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The repayment contract was signed in January 1977. However, final design and specifications were not completed until mid-1979 and the initial construction contract was not let until December 1979. At the time the repayment contract was signed, the estimated municipal and industrial share of the project was $28 million; however, recognizing the potential for cost escalation, the contract provided for repayment of up to $38 million by the Tri-County Water Conservancy District. Article 6(C) of the repayment contract states:

> The Contractor hereby agrees to pay all project costs allocated to M&I use, including interest during construction, but not more than $38 million. Said obligation limit is the current estimated project cost allocated to M&I use, based on January 1, 1976 price levels and fiscal year 1976 interest rates increased to cover possible changes in the cost of construction, increases in the applicable rate of interest, changes in project works, or changes in the allocation of project water. The estimated cost based on January 1976 price levels and fiscal year 1976 interest rates is $27,966,000. The allocated M&I repayment obligation is based on furnishing 28,100 acre-feet annually of project M&I water and is to be paid with revenues received from project M&I water users and in accordance with sub-article d. hereof.

The extended delay in construction and related inflation and the redesign of safety-related project features have increased the M&I share of project costs to approximately $73 million. Passage of S. 662 would limit Tri-County's repayment obligation to the contractual ceiling of $38 million, including interest on construction costs.

Legislative History

S. 662 was introduced on March 3, 1983. A hearing was held before the Subcommittee on Water and Power on May 2, 1983, at which time the Administration did not object to passage of the measure.

A companion measure, H.R. 2070, which was introduced on March 11, 1983, is pending before the House Committee on Interior and Insular Affairs.

A similar bill, H. 2568, was reported by the Committee on Energy and Natural Resources on December 8, 1982, but was not considered prior to adjournment of the 97th Congress.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business meeting on May 13, 1983, by a vote of a quorum present recommended that the Senate pass S. 662, as described herein.

The rollcall vote on reporting the measure was 12 yeas and 5 nays as follows:

YEAS	NAYS
McClure	Chafee
Hatfield	Heinz [1]
Weicker [1]	Bumpers [1]
Wallop	Metzenbaum [1]
Warner	Bradley [1]
Murkowski	
Nickles	
Hecht	
Johnston [1]	
Jackson	
Ford	
Melcher	

[1] Indicates vote by proxy.

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., May 13, 1983.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 662, a bill to provide for confirmation of the repayment contract of the Dallas Creek participating project of the Upper Colorado storage project, as ordered reported by the Senate Committee on Energy and Natural Resources, May 13, 1983.

This bill reaffirms the provisions of the repayment contract for the Dallas Creek participating project to specify that the portion of costs allocable to municipal and industrial use which exceeds $38 million shall not be reimbursable to the federal government by the Tri-County Water Conservancy District in Colorado. It is not expected that additional receipts would have been realized in the absence of this legislation, because the original repayment contract specifically set $38 million as the maximum reimbursable obligation of the water district. Thus, it is estimated that no budget impact will result from enactment of this legislation.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 662 as reported.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little if any additional paperwork would result from the enactment of S. 662.

Executive Communications

The pertinent legislative reports received by the Committee from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations relating to S. 662 are set forth as follows:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., May 9, 1983.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This responds to your request for our views on S. 662, a bill "To provide for confirmation of the repayment contract of the Dallas Creek participating project of the Upper Colorado storage project."

We do not object to enactment of S. 662.

S. 662 would relieve the Tri-County Water Conservancy District of the costs necessary to complete the municipal and industrial features for the Dallas Creek Project in excess of the $38 million repayment obligation now specified in the district's contract with the United States. As of January 1983, we estimate that the municipal and industrial costs of the Dallas Creek project will be approximately $73 million. Thus, if this bill were enacted, the municipal beneficiaries of the project would repay about half the costs allocated to provide them a water suppy.

It is this Administration's policy that all costs associated with providing benefits to municipal and industrial water users should be repaid by the direct beneficiaries. However, we also recognize that that is a unique situation.

Because of the failure of the Teton Dam and the subsequent improvement of design criteria, Ridgway Dam, the main storage feature of the Dallas Creek Project, was redesigned for safety reasons. Both the necessary modifications and inflation have substantially increased the estimated cost to complete the project. Unfortunately, the 1977 repayment contract with the district does not contain any provision for escalating or renegotiating the district's repayment obligation beyond $38 million in the event costs exceed repayment coverage.

The existing contract simply provides that the United States will construct the Dallas Creek Project and that the Tri-County Water Conservancy District will repay a maximum of $38 million toward the

cost of furnishing municipal and industrial water facilities. On the basis of this arrangement, the district's electorate approved the repayment contract and construction was initiated.

The question that arises is whether the United States should incur the consequences of that 1977 contract and carry out the express terms of the contract, or whether the district should be required to absorb extra costs it specifically wished to avoid.

We have explored other solutions to resolve this problem besides remedial legislation. One possibility is to market a portion of the municipal water supply to a third party such as an industrial customer. Moreover, the provisions of the Water Supply Act of 1958 allow the deferment of a limited portion of the costs allocated to municipal and industrial water storage if there is a reasonable expectation and assurance that the deferred costs eventually will be repaid. However, these solutions could involve a reduction in the available water supply to the district.

In conclusion, we believe it is unfortunate that certain usual contract requirements, which allow for allocation of municipal and industrial cost increases above the original estimates, were deleted from this contract. We believe this is indeed a unique set of circumstances that should not be considered as a precedent for any other water project cost-sharing arrangement. For these reasons, we do not object to the enactment of S. 662.

We want to assure the Committee, however, that the Administration will make every effort to avoid repetition of this situation. We assure you that we will not sign any future contracts that do not provide for full repayment of the municipal and industrial costs of water as required under Reclamation law.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

GARREY E. CARRUTHERS,
Assistant Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., May 9, 1983.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of March 7, 1983, for the views of the Office of Management and Budget on S. 662, a bill "To provide for confirmation of the repayment contract of the Dallas Creek participating project of the Upper Colorado storage project."

The Office of Management and Budget concurs in the views of the Department of the Interior as expressed by Mr. Robert N. Broadbent, Commissioner of the Bureau of Reclamation, in his testimony of May 2, 1983, before the Subcommittee on Water and Power. Accordingly, we have no objection to the enactment of S. 662.

Sincerely,

JAMES M. FREY,
Assistant Director for Legislative Reference.

Minority Views of Messrs. Metzenbaum, Chafee, and Heinz

We are strongly opposed to S. 662. The legislation would put Congress in the strange position of validating what may well be an illegal contract. The contract for the Dallas Creek project waives the normal requirement that local water users repay the costs of municipal water supply projects. Its ratification would set a dangerous precedent which could come back to haunt the American taxpayer.

The Dallas Creek contract limits the local water district's liability for municipal and industrial (M&I) costs to $38 million. The current cost overrun is nearly 100 percent, or about $35 million. Thus, the contract provides no assurance that the full M&I costs will ever be repaid.

It is not clear why the Bureau of Reclamation signed a contract which on its face is in clear violation of the Water Supply Act of 1958. That law explicitly states that all costs allocated to M&I users shall be repaid in full, with interest.

It is clear that enactment of this bill would deprive the Treasury of at least $35 million, plus interest which would be due if the same repayment requirement applied to every other project were upheld on the Dallas Creek project.

Supporters claim that this legislation simply confirms the original contract. But Congress does not normally "confirm" or "ratify" water supply contracts. Why is it doing so in this case? The obvious answer is that this contract is legally suspect.

If this is, in fact, a valid contract, as supporters say, it should be able to withstand a legal test if one is mounted. But Congress should not—nor is there a need to—short circuit the judicial machinery.

We are also told that the local district is not responsible for the cost overruns and should therefore not be required to pay for them. We view this as a weak argument. The fact is local districts are almost never the cause of cost overruns on Bureau projects. If this defense were carried to its logical conclusion, there would never be any repayment by beneficiaries on any projects beyond preliminary cost estimates.

Finally, the Dallas Creek legislation would set a dangerous precedent. It is worth noting that the Army Corps of Engineers has executed more than 160 contracts pursuant to the Water Supply Act. If the Congress gives the Dallas Creek users an exception, it is inviting other districts to seek similar preferential treatment.

For these reasons, we oppose S. 662.

Howard M. Metzenbaum.
John Chafee.
John Heinz.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by S. 662 as reported.

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